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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,943	06/02/2000	Perry R. DeYoung	OLI02 P-350	6561

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EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,943

Applicant(s)

DeYoung

Examiner

Clark F. Dexter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 7, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above, claim(s) 2, 7-13, 23-30, 35-40, 45, 55, and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 14-22, 31-34, 41-44, 46-54, and 57-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other:

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DETAILED ACTION

1. The amendments filed May 7, 2002 and April 11, 2002 have been entered. It is noted that in view of the new amendment practice under 37 CFR 1.121 which became mandatory for all amendments on March 1, 2001, and due to the limited amount of examining time per application, if the amendment contains changes to existing language that requires a marked-up version showing those changes, the Examiner is relying upon the marked-up version(s) for examination of the application. It is applicant's responsibility to ensure that the clean version(s) is (are) the same as the marked-up version(s). It is further noted that the clean version(s) is (are) considered to be the Official version(s).

Election/Restriction

2. Applicant's election with traverse of Group II (claims 1, 3-6, 14-22, 31-34, 41-44, 46-54 and 57-62) in the response filed May 7, 2002 (paper no. 8) is acknowledged. The traversal, which was set forth in an earlier response (paper no. 5 filed April 11, 2002) is on the ground(s) that the restriction is improper for various reasons. This is not found persuasive for the following reasons.

First, applicant argues that "Groups III, VI and VII should be examined with any elective group because the Examiner has not identified any burden for examining these additional groups." The Examiner's position is that all of the groups are directed to distinct inventions and

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would require an undue burden to examine any of these groups together. The groupings have been updated and provided with additional details to correspond with the amended claims as well as the newly added claims.

Next, in the fourth paragraph on page 4 of the response, applicant argues that a test for whether species exist must be undertaken. However, no species election has been required. The claims are considered to be directed to distinct inventions related as subcombinations useable together. Further, the quotation from section MPEP 806.04(b) page 3 of the response is not considered to be pertinent since the subcombinations as disclosed and claimed are not considered to be both (A) species under a claimed genus and (B) related. Rather, they are considered to be related only as subcombinations useable together.

In the paragraph bridging pages 4 and 5 of the response, applicant argues that “[A]n independent claim cannot be considered a combination relative to a “subcombination” claim that depends from that independent claim.” The Examiner agrees, and none of the independent claims have been treated as such. In other words, none of the independent claims have been restricted from any of their dependent claims. Rather, they will be examined upon election of one of the subcombination groups. Applicant further argues that the requirement for an election of species must be applied. The Examiner respectfully submits that applicant’s conclusion that a requirement of an election of species must be met is not understood, particularly since an election of species has not been required.

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Regarding applicant's argument beginning in the second paragraph on page 5 of the response to the second paragraph on page 8 of the response, the Examiner respectfully submits that applicant's arguments are not understood. The groups are clearly meet the criteria for combination-subcombinations and subcominations useable together as set forth in MPEP 806.05 (e.g., see quotation from this section on page 3 of applicant's response).

Finally, in the third paragraph on page 8 of the response, applicant argues that "[U]pon reviewing the Examiner's statements as to why the claims are restricted, it is apparent that the Examiner may be considering dependent claims as though they were independent claims." It is respectfully submitted that applicant's position regarding independent/dependent claims is not understood. As applicant is well aware, all claims are considered as independent claims, wherein dependent claims are merely independent claims written in shorthand. Whether a claim is independent or dependent is merely a matter of form and has no bearing on the scope or interpretation of the claim. For example, claim 1 is merely a claim which defines subject matter that is common to all groups. The invention defined in claim 1 is not considered to be distinct from the inventions of any of the groups. Thus, claim 1 has been included for examination with all of the groups.

3. Claims 2, 7-13, 23-30, 35-40, 45, 55 and 56 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

The requirement is still deemed proper and is therefore made FINAL.

4. The following are the updated groupings including new claims 39-62:

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- I. Claims **1, 18, 39, 50, 61, 62**; and 2 and 40, drawn to a food press with a delay device, classified in class 100, subclass 49.
- II. Claims **1, 18, 39, 50, 61, 62**; and 3-6, 14-17, 19-22, 31-34, 41-44, 46-49, 51-54 and 57-60, drawn to a food press with a specific press plate configuration, classified in class 100, subclass 269.01.
- III. Claims **1, 18, 39, 50, 61, 62**; and 7, 8, 23 and 24, drawn to food press with a combination specific press plate configuration and a knife assembly , classified in class 83, subclass 620.
- IV. Claims **1, 18, 39, 50, 61, 62**; and 10-13 and 27-30, drawn to food press with a knife assembly, classified in class 83, subclass 679.
- V. Claims **1, 18, 39, 50, 61, 62**; and 9, 25, 26, 45, 55 and 56, drawn to food press with a specific lid configuration, classified in class 100, subclass 250.
- VI. Claims **1, 18, 39, 50, 61, 62**; and 35, drawn to food press with a combination specific press plate configuration and a delay device, classified in class 100, subclass 43.
- VII. Claims **1, 18, 39, 50, 61, 62**; and 36-38, drawn to a food press with a combination specific press plate configuration and a specific lid configuration, classified in class 100, subclass 246.

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Information Disclosure Statement

5. The information disclosure statement filed June 2, 2000 (paper no. 3) has been received and the references listed thereon have been considered.

Drawings

6. The drawings are objected to because in Figure 1, it is not clear as to whether the center vertically-extending structure between structures 56a and 56b is also a support, and it seems that numeral 56c along with a lead line should be added to indicate this central support for clarity. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Abstract

7. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

8. The abstract of the disclosure is objected to because it is too long. Appropriate correction is required. See MPEP § 608.01(b).

Specification

9. The disclosure is objected to because of the following informalities:

On page 4, line 13, "5" appears to be inaccurate, and it seems that it should be changed to --8-- or the like.

On page 7, line 12, "100" appears to be inaccurate, and it seems that it should be changed to --110-- or the like; in line 23, it seems that the phrase -- , the front central support 56c-- should be inserted after "56b" or the like for clarity, particularly since it appears that the switch housing is attached to all three front supports.

On page 9, line 16, "5" appears to be inaccurate, and it seems that it should be changed to --8-- or the like.

On page 10, line 13 is awkwardly worded, and it seems that "into the through" should read --into and through-- or the like. ←

On page 11, line 27, it seems that ^{the second occurrence of} "be" is improper and should be deleted. ←

Appropriate correction is required.

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Claim Rejections - 35 USC § 112

10. Claims 1, 3-6, 14-22, 31-34, 41-44, 46-54 and 57-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with vague and indefinite language and should be carefully reviewed. The following are examples of many of the occurrences of such language.

In claim 1, lines 3-4, the recitation “adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated” is vague and indefinite as to how the latch assembly is “adapted” to perform the recited function; in line 6, the recitation “adapted to accept food between the lid and the press plate” is vague and indefinite as to how the hopper is “adapted” to perform the recited function; in line 7, the recitation “adapted to be driven towards the lid” is vague and indefinite as to how the press plate is “adapted” to perform the recited function; in line 9, the recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform such a function.

In claim 3, line 4, the recitation “configured to move towards the bottom of the hopper” is vague and indefinite as to how the press plate is “configured” to perform the recited function; in lines 4-5, “the pressure” lacks positive antecedent basis, and it seems that “the” should be deleted.

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In claim 5, line 2, the recitation "configured to move the press plate" is vague and indefinite as to how the reversible cylinder assembly is "configured" to perform the recited function. ↩

In claim 6, line 2, the recitation "adapted to move downward" is vague and indefinite as to how the reversible cylinder assembly is "adapted" to perform the recited function. ↩

In claim 14, line 2, the recitation "adapted to drive the press plate towards the lid" is vague and indefinite as to how the hydraulic assembly is "adapted" to perform the recited function. ↩

In claim 15, line 2, the recitation "adapted to activate the latch assembly" is vague and indefinite as to how the hydraulic assembly is "adapted" to perform the recited function. ↩

In claim 16, line 2, the recitation "automatically activates" is vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

In claim 17, lines 2-3, the recitation "adapted to move downward" is vague and indefinite as to how the reversible cylinder assembly is "adapted" to perform the recited function. ↩

In claim 18, lines 3-4, the recitation "adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated" is vague and indefinite as to how the latch assembly is "adapted" to perform the recited function; in line 6, the recitation "adapted to accept food between the lid and the press plate" is vague and indefinite as to how the hopper is "adapted" to perform the recited function; in line 7, the recitation "adapted to be driven towards the lid" is vague and indefinite as to how the press plate ↩

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is “adapted” to perform the recited function; in line 9, the recitation “automatically deactivates” is vague and indefinite since sufficient structure has not been set forth to perform such a function; in line 10, the phrase “and divided” renders the claim vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

In claim 19, line 4, the recitation “configured to move towards the bottom of the hopper” is vague and indefinite as to how the press plate is “configured” to perform the recited function; in lines 4-5, “the pressure” lacks positive antecedent basis, and it seems that “the” should be deleted. ↩

In claim 21, line 2, the recitation “configured to move the press plate” is vague and indefinite as to how the reversible cylinder assembly is “configured” to perform the recited function. ↩

In claim 22, line 2, the recitation “adapted to move downward” is vague and indefinite as to how the reversible cylinder assembly is “adapted” to perform the recited function. ↩

In claim 31, line 2, the recitation “adapted to drive the press plate towards the lid” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 32, line 2, the recitation “adapted to activate the latch assembly” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 33, lines 2-3, the recitation “adapted to move downward” is vague and indefinite as to how the reversible cylinder assembly is “adapted” to perform the recited function. ↩

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In claim 34, line 2, structural cooperation has not been positively set forth for “an actuating mechanism”, particularly with respect to the press plate; in line 3, the recitation “automatically deactivated” is vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

In claim 39, lines 3-4, the recitation “configured to interact” is vague and indefinite as to how the closure mechanism is “configured” to perform the recited function; in line 8, the recitation “adapted to accept food between the lid and the press plate” is vague and indefinite as to how the hopper is “adapted” to perform the recited function; in line 9, the recitation “adapted to be driven towards the lid” is vague and indefinite as to how the press plate is “adapted” to perform the recited function; in line 11, the recitation “automatically activates” is vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩ ↩ ↩

In claim 41, line 4, the recitation “configured to move towards the bottom of the hopper” is vague and indefinite as to how the press plate is “configured” to perform the recited function; in lines 4-5, “the pressure” lacks positive antecedent basis, and it seems that “the” should be deleted. ↩

In claim 43, line 2, the recitation “configured to move the press plate” is vague and indefinite as to how the reversible cylinder assembly is “configured” to perform the recited function. ↩

In claim 44, line 2, the recitation “adapted to move downward” is vague and indefinite as to how the reversible cylinder assembly is “adapted” to perform the recited function. ↩

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In claim 46, line 2, the recitation “adapted to drive the press plate towards the lid” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 47, line 2, the recitation “adapted to activate the closure mechanism” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 48, line 2, the recitation “automatically deactivates” is vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

In claim 49, lines 2-3, the recitation “adapted to move downward” is vague and indefinite as to how the reversible cylinder assembly is “adapted” to perform the recited function. ↩

In claim 50, line 4, the recitation “configured to interact” is vague and indefinite as to how the closure mechanism is “configured” to perform the recited function; in line 8, the recitation “adapted to accept food between the lid and the press plate” is vague and indefinite as to how the hopper is “adapted” to perform the recited function; in line 9, the recitation “adapted to be driven towards the lid” is vague and indefinite as to how the press plate is “adapted” to perform the recited function; in line 11, the recitation “automatically deactivates” is vague and indefinite since sufficient structure has not been set forth to perform such a function; in line 12, the phrase “and divided” renders the claim vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

In claim 51, line 4, the recitation “configured to move towards the bottom of the hopper” is vague and indefinite as to how the press plate is “configured” to perform the recited function; ↩

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in lines 4-5, [✓]“the pressure” lacks positive antecedent basis, and it seems that “the” should be deleted.

In claim 53, line 2, the recitation “configured to move the press plate” is vague and indefinite as to how the reversible cylinder assembly is “configured” to perform the recited function. ↩

In claim 54, line 2, the recitation “adapted to move downward” is vague and indefinite as to how the cylinder assembly is “adapted” to perform the recited function. ↩

In claim 57, line 2, the recitation “adapted to drive the press plate towards the lid” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 58, line 2, the recitation “adapted to activate the closure mechanism” is vague and indefinite as to how the hydraulic assembly is “adapted” to perform the recited function. ↩

In claim 59, lines 2-3, the recitation “adapted to move downward” is vague and indefinite as to how the reversible cylinder assembly is “adapted” to perform the recited function. ↩

In claim 60, line 2, structural cooperation has not been positively set forth for “an actuating mechanism”, particularly with respect to the press plate; in line 3, the recitation “automatically deactivated” is vague and indefinite since sufficient structure has not been set forth to perform such a function. ↩

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In claim 61, line 7, the recitation “adapted to accept food between the lid and the press plate” is vague and indefinite as to how the hopper is “adapted” to perform the recited function; in line 8, the recitation “adapted to be driven towards the lid” is vague and indefinite as to how the press plate is “adapted” to perform the recited function; in line 10, the recitation “automatically activates” is vague and indefinite since it does not appear that sufficient structure has not been set forth to perform such a function.

In claim 62, line 7, the recitation “adapted to accept dough between the lid and the press plate” is vague and indefinite as to how the hopper is “adapted” to perform the recited function; also in line 7, “dough” appears to be inaccurate, and it seems that it should read --food-- or the like; in line 8, the recitation “adapted to be driven towards the lid” is vague and indefinite as to how the press plate is “adapted” to perform the recited function; in line 10, the recitation “automatically deactivates” is vague and indefinite since it does not appear that sufficient structure has not been set forth to perform such a function; in line 11, the phrase “and divided” renders the claim vague and indefinite since sufficient structure has not been set forth to perform such a function.

Prior Art

11. Further consideration of the claimed invention with respect to the prior art will be given upon clarification of the claimed invention.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.



Clark F. Dexter
Primary Examiner
Art Unit 3724

cf
July 15, 2002